S.B. CIVIL MISC. ARBITRATION APPL. NO.52/05
(M/s Hulaschand Bhutra Vs. U.O.I. & Ors.)

Date of Order : 18.09.2006

HON'BLE MR. RAJESH BALIA,J.

Mr. P.R.Purohit, for the applicant.
Mr. Ravi Bhansali, for the respondent.

This application has been moved for appointment of arbitrator in respect of contract which was completed by the applicant in 1996 for which payment has been made to the applicant by the respondents.

It is not in dispute before me that the final bill is required to be prepared by the respondents but the same has not been prepared. Respondents claim that certain formalities for preparation of the final bill has not been complied with and it has also been stated that there are outstanding dues against the applicant under other contract against which the final payment due to the petitioner-applicant is likely to be adjusted.

Apparently, the dispute, relating to the settlement of the bill either in the form of the procedure of the preparation and final settlement of the bill or about the adjustment of the bill which is ultimately made against the

work executed by the applicant, does exists. Once, it is accepted to be the responsibility of the preparing final bill lie with the respondents for the work which has been admitted by the applicant and the said final bill has not been prepared by the respondents for over four years since the completion of the work is suggestive of the fact that a live dispute exists between the parties else, the respondents would at least have prepared final bill according to measurement available with them and called upon the applicant to accept the same.

In these circumstances, the objection regarding filing the application belatedly cannot be sustained. There is no denial of the fact that arbitration agreement exists and dispute relating to the contract between the parties is required to be adjudicated by the arbitrator.

In these circumstances, this application has been moved under Section 11 of the Arbitration and Conciliation Act, 1946 after the non-applicant having failed to appoint the arbitrator after service of notice under Section 11.

In the aforesaid facts and circumstances of the case, the application deserves to be allowed. Sh. Mandal Prasad Bohra, Retd. RHJS resident of Jodhpur is appointed as sole arbitrator to whom the dispute shall be referred. All objections including the objection to the jurisdiction of the arbitral tribunal and the objection as to prematurity claim may be raised before the arbitrator. The cost of arbitration and fees of arbitrator shell be as determined by the arbitrator.

(RAJESH BALIA),J.

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